



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 5**

**77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590**

**EPA Region 5 Records Ctr.**



**225197**

**REPLY TO THE ATTENTION OF**

**C-14J**

*Via First Class Mail*

April 27, 1999

Julie Emmerich O'Keefe  
Pellegrini and Emmerich  
Suite 390  
Gateway One on the Mall  
701 Market Street  
St. Louis, MO 63101

Re: Sauget Area 2, Site Q  
Eagle Marine Industries

Dear Ms. O'Keefe:

I received your letter dated March 17, 1999 requesting "a detailed letter explaining, based upon both facts and applicable law, why [U.S.] EPA believes Eagle Marine cannot substantiate its claim that it is an innocent landowner." In prior correspondence, I have stated that, given the facts currently available to U.S. EPA, Eagle Marine will have considerable difficulty proving it is an innocent landowner at Sauget Area 2, Site Q.

In your letter you assert that Eagle Marine qualifies for the affirmative defense of an "innocent landowner" pursuant to Section 107(b)(3) and 101(35)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and therefore your client is not liable. However, I believe that Eagle Marine is liable as the current owner of the site. As I explained in my February 10, 1999, letter, to establish an innocent landowner affirmative defense, a defendant must prove that acts or omissions of a third party with whom the defendant has or had no direct or indirect contractual relationship solely caused the release or threat of release. Additionally, the defendant must prove that prior to acquiring the property, he/she made all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. 42 U.S.C. §9607(b)(3). I believe that Eagle Marine can not substantiate its claim as an innocent landowner for the following reasons:

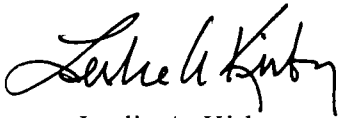
- 1) Eagle Marine, or its predecessors, had a contractual relationship with Cahokia Trust, the owner at the time the majority of disposal occurred at Site Q because Eagle Marine, or its

- predecessors, acquired the property from Cahokia Trust;
- 2) Eagle Marine has not exercised due care with respect to the hazardous substances contained on its property. On February 16, 1995, U.S. EPA's On-Scene Coordinator (OSC) for Site Q observed that several drums of PCB containing materials had been bulldozed as part of an expansion project for storage of landscape material. The OSC noted in his report that "this grading spread the contents of the previously exposed drums over the riverbank and beach"; and
  - 3) Eagle Marine knew or should have known that the landfill it purchased contained hazardous substances. In your March 3, 1999 response, you state that Eagle Marine made a visual inspection of the Site prior to purchase. Given the fact that this landfill was active at the time of purchase in 1973 and that the Site was located in a heavily industrialized area of Sauget, Illinois, Eagle Marine knew or should have known that the landfill contained hazardous substances.

For these reasons, Eagle Marine Industries will have great difficulty substantiating its innocent landowner claim.

I may be reached at (312) 886-7166 should you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie A. Kirby". The signature is fluid and cursive, with the first name "Leslie" being more prominent.

Leslie A. Kirby  
Assistant Regional Counsel

cc: Michael McAteer, U.S. EPA